

**PLEASE PRINT CLEARLY OR TYPE**

STATE OF NORTH CAROLINA

IN THE OFFICE OF  
ADMINISTRATIVE HEARINGS

COUNTY OF WAKE

NEW HORIZON GROUP HOME, LLC,	)	
	)	
PETITIONER,	)	
	)	
v.	)	<b>PETITION</b>
	)	<b>FOR A</b>
NORTH CAROLINA DEPARTMENT OF HEALTH AND HUMAN	)	<b>CONTESTED CASE HEARING</b>
SERVICES, DIVISION OF SOCIAL SERVICES,	)	
	)	
RESPONDENT.	)	

I hereby ask for a contested case hearing as provided for by North Carolina General Statute § 150B-23 because Respondent North Carolina Department of Health and Human Services ("DHHS") has rendered the following decision against Petitioner:

In a Denial of Application for Licensure of a Residential Child-Care Facility dated July 31, 2019, DHHS informed Petitioner that its facility does not comply with all statutes and rules for licensure as a residential child-care facility, and DHHS was denying Petitioner's application for a license to operate (See attached Exhibit 1).

In accordance with N.C. Gen. Stat. § 150B-23(a) Petitioner disagrees with DHHS's denial, and thereby requests a contested case hearing in the Office of Administrative Hearings.

Petitioner also asks for reasonable and appropriate attorney's fees in association with bringing this Petition for a Contested Case Hearing.

Amount in controversy \$ Ongoing

(If more space is needed, attach additional pages.)

Because of these facts, the State agency or board has: (check at least one from each column)

<input checked="" type="checkbox"/> <u>X</u> deprived me of property; <input checked="" type="checkbox"/> <u>X</u> ordered me to pay a fine or civil penalty; or <input checked="" type="checkbox"/> <u>X</u> otherwise substantially prejudiced my rights;	<b>AND</b>	<input checked="" type="checkbox"/> <u>X</u> exceeded its authority or jurisdiction; <input checked="" type="checkbox"/> <u>X</u> acted erroneously; <input checked="" type="checkbox"/> <u>X</u> failed to use proper procedure; <input checked="" type="checkbox"/> <u>X</u> acted arbitrarily or capriciously; or <input checked="" type="checkbox"/> <u>X</u> failed to act as required by law or rule.
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Date: September 30, 2019

Your phone number: (919) 219-9319

Print your full address: P.O. Box 2452  
(street address/p.o. box)

Lumberton NC 28359-2452  
(city) (state) (zip)

Print your name: Barbara Brockington, Manager

Your signature: s/ Knicole C. Emanuel

Knicole C. Emanuel on behalf of New Horizon Group Home, LLC Potomac Law Group, 1300 Pennsylvania Ave., NW, Suite 700, Washington, D.C., 20004; Telephone: (919) 219-9319; **NC Bar No. 37795**.

**You must** mail or deliver a **COPY** of this Petition to the State agency or board named on line (3) of this form. You should contact the agency or board to determine the name of the person to be served.

**CERTIFICATE OF SERVICE**

I certify that this Petition has been served on the State agency or board named below by depositing a copy of it with the United States Postal Service with sufficient postage affixed **OR** by delivering it to the named agency or board:

Lisa G. Corbett Dept. of Health and Human Services Office of Legal Affairs 2001 Mail Service Center Raleigh, NC 27699-2001	June S. Ferrell Special Deputy Attorney General N.C. Dept. of Justice 9001 Mail Service Center Raleigh, NC 27699-9001
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This the 30<sup>th</sup> day of September, 2019.

/s Knicole C. Emanuel

(Attorney for Petitioner)

When you have completed this form, you **MUST** mail or deliver the **ORIGINAL AND ONE COPY** to the Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, NC 27699-6714.

**This box for OAH use only.**

Amount Paid \$ _____	Indigent (must complete form HOI )
Cash – receipt number _____	Mandated federal cause of action
Money Order    Certified Check    Attorney Trust Account	
Check number _____	<b>Received by:</b> _____

**INSTRUCTIONS FOR FORM H-06**  
**“PETITION FOR A CONTESTED CASE” AND “CERTIFICATE OF SERVICE”**

**FILL IN BLANKS:**

Fill in your county of residence (1), print your name on line (2), and the name of the agency or board about which you are complaining on line (3). Be sure to briefly state the facts about your case. Enter the dollar amount in controversy, if applicable on line (4). Check all of the items that apply in section (5). Enter the date on line (6), your telephone number on line (7), your address on line (8), print your name on line (9), and sign your name on line (10).

**CERTIFICATE OF SERVICE:**

You must mail or deliver a copy of your completed petition to the agency or board named on line (3) and complete the “certificate of service” section on your petition, entering the name of the person to whom you mailed or delivered the petition on line (11). You should contact the agency or board to determine the name of the person to be served. Print the name of the state agency involved on line (12), the address of the agency or board on line (13), the date on line (14), and sign your name on line (15).

**FILING FEE**

Filing fees can be paid by either, cash, money order, certified check or checks drawn on attorney trust accounts. The fee must be paid at the time the petition is filed. Checks should be made payable to the Office of Administrative Hearings. If your case is involving a mandated federal cause of action there is no fee. The filing fee for Certificate of Need cases is \$125.00 as well as Environmental issues concerning Clean Water Act permitting, Clean Air Act permitting, Animal Waste Management System permitting, and permitting for water use within capacity use areas and any case when the amount in controversy is \$50,000.00 or more. All other case types shall pay \$20.00.

**FILING YOUR PETITION WITH THE OFFICE OF ADMINISTRATIVE HEARINGS:**

Your contested case will commence as soon as you file your completed original petition, along with a copy, properly signed and appropriate fee paid, with the Office of Administrative Hearings. Below are the mailing and physical addresses:

**Office of Administrative Hearings**  
**6714 Mail Service Center**

**Office of Administrative Hearings**  
**1711 New Hope Church Road**

If you mail this form, the case commences when it is **received and filed** in this office.

You may file your petition by fax during normal business hours by faxing the petition to the Clerk's Office at (919) 431-3100.

You may file your petition by electronic mail by an attached file either in PDF format or a document that is compatible with or convertible to the most recent version of Word for Windows by sending the electronic transmission to [oah.clerks@oah.nc.gov](mailto:oah.clerks@oah.nc.gov). Electronic mail without attached file shall not constitute a valid filing.

**OAH must receive the original signed document and one copy along with the appropriate fee, within seven business days** following the fax or electronic transmission for the petition to be deemed "filed" on the fax or electronic transmission date.

# EXHIBIT 1



NC DEPARTMENT OF  
**HEALTH AND  
HUMAN SERVICES**

ROY COOPER • Governor

MANDY COHEN, MD, MPH • Secretary

SUSAN OSBORNE • Assistant Secretary for County Operations for  
Human Services

**VIA CERTIFIED LETTER**

**NOTICE OF ADMINISTRATIVE ACTION**

**Type of Action: Denial of Application for Licensure of a Residential Child-Care Facility**

**Applicant:** Barbara Brockington  
P.O. Box 2452  
Lumberton, NC 28359-2452

**Agency:** New Horizon Group Home, LLC

**Date:** July 31, 2019

**PLEASE TAKE NOTICE** that the North Carolina Department of Health and Human Services (NCDHHS), Division of Social Services has determined that your facility does not comply with all the statutes and rules for licensure as a residential child-care facility and is, therefore, denying your application to operate a residential child-care facility.

**AREAS OF NON-COMPLIANCE WITH STATUTES AND RULES:**

NCDHHS is tasked with protecting the health, safety and well-being of children who are separated from their families. N.C.G.S. § 131D-10.1 requires that the quality of care for children separated from their families be as close as possible to the care and nurturing that society expects of a family. Children who have been removed from their families are an at-risk population and many of them have greater needs than most children. In licensing a residential child-care facility, the child's best interest is paramount. Pursuant to N.C.G.S. § 131D-10.6, N.C.G.S. § 131D-10.3, 10A N.C.A.C. 70I .0101, and 10A N.C.A.C. 70L .0201, NCDHHS shall deny an application for a residential child-care facility license if it finds that either the licensure laws in Article 1A of Chapter 131D of the General Statutes or the licensure rules in Chapter 70 of Title 10A of the North Carolina Administrative Code are not met. As required by 10A N.C.A.C. 70I .0101(f), NCDHHS has reviewed licensure actions taken against New Horizon Group Home, LLC pursuant to Chapter 122C of the General Statutes. Based on a review conducted by NCDHHS of information that it obtained, it finds that the following residential child-care facility licensure laws and rules are not met:

**NC DEPARTMENT OF HEALTH AND HUMAN SERVICES • DIVISION OF SOCIAL SERVICES**

LOCATION: 820 S. Boylan Avenue, McBryde Building, Raleigh, NC 27603

MAILING ADDRESS: 2401 Mail Service Center, Raleigh, NC 27699-2401

www.ncdhhs.gov • TEL: 919-855-6335 • FAX: 919-334-1018

AN EQUAL OPPORTUNITY / AFFIRMATIVE ACTION EMPLOYER

N.C.G.S. § 131D-10.6 and 10A NCAC 70L .0201(a)  
NCDHHS finds that the health, safety or welfare of children is threatened.

N.C.G.S. § 131D-10.3(h)(2)(b) and 10A N.C.A.C. 70I .0101(f)(1)(A)(ii)  
A Type A1 penalty was incurred and two violations were assessed in the 18 months prior to the application and 18 months have not passed from the date of the most recent violation.

N.C.G.S. § 131D-10.3(h)(2)(c) and 10A N.C.A.C. 70I .0101(f)(1)(A)(iii)  
A Type A1 penalty was incurred and three violations were assessed in the 36 months prior to the application and 36 months have not passed from the date of the most recent violation.

10A N.C.A.C. 70L .0201(a)(3) and 10A N.C.A.C. 70I .0101(f)(1)(C)  
The applicant has a pending appeal of a revocation of any facility or agency licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7, which is owned by the applicant.

10A N.C.A.C. 70L .0201(a)(3) and 10A N.C.A.C. 70I .0101(f)(1)(C)  
The applicant has a pending appeal of a summary suspension of any facility or agency licensed pursuant to G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, or G.S. 110, Article 7, which is owned by the applicant.

N.C.G.S. § 131D-10.3(h)(3) and 10A N.C.A.C. 70I .0101(f)(1)(D)  
The applicant has an individual as part of their governing body or management who previously held a license that was revoked or summarily suspended under G.S. 122C, Article 2 and the related rules and 60 months have not passed from the date of the summary suspension.

10A N.C.A.C. 70L .0201(a)(4)  
The applicant has an individual as part of the governing body or management who previously held a license which was revoked or summarily suspended under G.S. 122C, Article 2, G.S. 131D, Articles 1 or 1A, and G.S. 110, Article 7 and the rules adopted under these laws.

## **BASIS FOR ACTION**

On July 17, 2019, NCDHHS received a new residential child-care facility license application for New Horizon Group Home, LLC. NCDHHS conducted a review of the submitted application and supporting documentation along with additional information about the applicant and has determined that the application should be denied for the reasons listed below.

As part of its review, NCDHHS conducted a web-based search of the North Carolina Secretary of State and the NCDHHS Provider Penalty Tracking Database. Additional

documentation was also obtained from the North Carolina Division of Health Service Regulation (NCDHSR), Mental Health Licensure and Certification Section.

On April 11, 2018, NCDHSR issued a summary suspension letter to New Horizon Group Home, LLC, which demanded New Horizon Group Home, LLC to close by the end of the day. NCDHSR took emergency action to close New Horizon Group Home, LLC due to eleven rule violations for various reasons, which are stated in the summary suspension letter and incorporated to this notice. In its letter NCDHSR found that New Horizon Group Home, LLC neglected to provide services to assure the health, safety and welfare of the clients.

On April 26, 2018, NCDHSR issued a notice of three Type A1 Administrative Penalties to New Horizon Group Home, LLC. The Type A1 penalties were based on NCDHSR's finding that New Horizon Group Home, LLC violated laws and rules in Chapter 122C of the General Statutes and related rules. NCDHSR assessed administrative penalties for violations of 10A N.C.A.C. 27G .1801, 10A N.C.A.C. 27D .0304, and N.C.A.C. 27E .0101. The April 26, 2018 letter with the specific violations and the basis for the violations is attached to this notice and incorporated herein.

On June 1, 2018, NCDHSR issued a notice of revocation to New Horizon Group Home, LLC of its license for violating 22 laws and rules relating to Chapter 122C of the General Statutes and related rules. The June 1, 2018 notice of revocation was based on a Statement of Deficiencies that NCDHSR issued to New Horizon Group Home, LLC on April 13, 2018. Both the notice of revocation and the Statement of Deficiencies are attached to this letter and incorporated herein.

New Horizon Group Home, LLC appealed the notice of revocation, summary suspension, and penalty assessments to the North Carolina Office of Administrative Hearings and the case is pending.

Additionally, based on the above cited laws and rules and N.C.G.S. § 131D-10.3(h)(2) and 10A N.C.A.C. 70I .0101(f)(A), a license cannot be issued to the applicant if the revocation or any of the penalty assessments are upheld by the North Carolina Office of Administrative Hearings.

## **PROCEDURES FOR FORMAL APPEAL**

### **A. Petition**

You have a right to file a petition for a contested case to request a formal appeal of this decision by an administrative law judge. You can file a petition for a contested case with the North Carolina Office of Administrative Hearings (OAH). You may obtain a petition form by downloading a copy from the OAH Hearings website (<http://www.oah.state.nc.us/>), by calling OAH at (919) 431-3000, or by writing to the Clerk of OAH at the following address: Office of Administrative Hearings, 6714 Mail Service Center, Raleigh, N.C. 27699-6700. If you do not use the OAH petition form, your request for a hearing must meet the requirements of a petition as set forth in N.C.G.S. § 150B-23. You can file your petition by mailing the original and one copy of the petition to the

above provided address for OAH. Your petition must name the North Carolina Department of Health and Human Services (not a county department of social services) as the Respondent in the case. As required by 10A N.C.A.C. 70L .0301, your petition must include a statement of the facts prompting your request for an appeal that is sufficient to allow for appropriate processing by NCDSS.

#### **B. Certificate of Service**

If you file a petition, as required by N.C.G.S. § 150B-23, you must include a certificate of service that shows you served a copy of the petition on the N.C. Department of Health and Human Services (NCDHHS) at the following address: Office of General Counsel, NCDHHS, Office of Legal Affairs, Adams Building, 2001 Mail Service Center, Raleigh, N.C. 27699-2001. The petition form provided by OAH includes a certificate of service section for you to complete. When you mail the original and one copy of the petition with the certificate of service to OAH, you must also mail a copy of the petition to the NCDHHS Office of General Counsel. Do not serve the petition on your supervising agency or a county department of social services because it will not satisfy the requirement in N.C.G.S. § 150B-23 that you serve a copy of the petition on the NCDHHS.

#### **C. Time Limits**

To preserve your right to an appeal, your petition and certificate of service must be received by OAH **within sixty (60) days of the date of this notice** otherwise your right to an appeal may be lost. You must allow sufficient time for the document to arrive by mail.

Sincerely,



Lisa T. Cauley  
Deputy Director for Child Welfare Services

#### **Attachments:**

Type A1 Administrative Penalties Letter  
Summary Suspension of License to Operate Letter  
Notice of Revocation of License Letter  
Statement of Deficiencies and Plan of Correction

#### **CC:**

Susan Osborne, Assistant Secretary for County Operations for Human Services  
Stephanie Gilliam, Chief Mental Health Licensure & Certification Section  
Michiele Elliott, Assistant Chief Mental Health Licensure & Certification Section  
Regina Cucurullo, Office of the Attorney General  
Julie Y. Cronin, Assistant General Counsel  
Teresa Strom, NCDSS Section Chief  
Linda Waite, NCDSS Regulatory and Licensing Program Administrator